

## LICENSING REGULATIONS THAT ALIGN WITH THE HCBS RULE

This document contains **requirements in 55 Pa. Code Chapters 2380, 2390, 6400 and 6500 that align with the Centers for Medicare and Medicaid Services (CMS) Home and Community-Based Services Rule**. ODP reviewed licensing inspection data for these requirements to develop the Home and Community-Based Services Rule Assessment Licensing Results.

Regulatory Requirement	Regulatory Citations			
	2380	2390	6400	6500
An individual <sup>1</sup> may not be deprived of rights as provided under subsections (b)—(q).	.21(a)	.21(a)	.31(a)	.31(a)
An individual may not be deprived of rights as provided under § 6400.32, 6500.32 (relating to rights of the individual).				
The facility shall educate, assist and provide the accommodation necessary for the individual to understand the individual’s rights.	.21(b)	.21(b)	.31(b)	.31(b)
The home shall educate, assist and provide the accommodation necessary for the individual to make choices and understand the individual’s rights.				
An individual shall be provided the assistance necessary for the individual to understand the individual’s rights.				
An individual may not be reprimanded, punished or retaliated against for exercising the individual’s rights.	.21(c)	.21(c)	.31(c)	.31(c)
A court’s written order that restricts an individual’s rights shall be followed.	.21(d)	.21(d)	.31(d)	.31(d)
A court-appointed legal guardian may exercise rights and make decisions on behalf of an individual in accordance with the conditions of guardianship as specified in the court order.	.21(e)	.21(e)	.31(e)	.31(e)
An individual who has a court-appointed legal guardian, or who has a court order restricting the individual’s rights, shall be involved in decision-making in accordance with the court order.	.21(f)	.21(f)	.31(f)	.31(f)
An individual has the right to designate persons to assist in decision-making and exercising rights on behalf of the individual.	.21(g)	.21(g)	.31(g)	.31(g)
An individual may not be discriminated against because of race, color, creed, disability, religious affiliation, ancestry, gender, gender identity, sexual orientation, national origin or age.	.21(h)	.21(h)	.32(a)	.32(a)
An individual has the right to civil and legal rights afforded by law, including the right to vote, speak freely, practice the religion of the individual’s choice and practice no religion.	.21(i)	.21(i)	.32(b)	.32(b)
An individual may not be abused, neglected, mistreated, exploited, abandoned or subjected to corporal punishment.	.21(j)	.21(j)	.32(c)	.32(c)
An individual shall be treated with dignity and respect.	.21(k)	.21(k)	.32(d)	.32(d)
An individual has the right to make choices and accept risks.	.21(l)	.21(l)	.32(e)	.32(e)
An individual has the right to refuse to participate in activities and services.	.21(m)	.21(m)	.2(f)	.32(f)

<sup>1</sup> The term client is used in lieu of individual in Chapter 2390.

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	2380	2390	6400	6500
An individual has the right to control the individual's own schedule and activities.			.32(g)	.32(g)
An individual has the right to privacy of person and possessions.	.21(n)	.21(n)	.32(h)	.32(h)
An individual has the right of access to and security of the individual's possessions.	.21(o)	.21(o)	.32(i)	.32(i)
An individual has the right to voice concerns about the services the individual receives.	.21(p)	.21(p)	.32(j)	.32(j)
An individual has the right to participate in the development and implementation of the individual plan.	.21(q)	.21(q)	.32(k)	.32(k)
An individual's rights shall be exercised so that another individual's rights are not violated.	.21(r)	.21(r)	.33(a)	.33(a)
An individual's rights shall be exercised so that another individual's or household member's rights are not violated.				
The facility/provider shall assist the affected individuals to negotiate choices in accordance with the facility's/provider's procedures for the individuals to resolve differences and make choices.	.21(s)	.21(s)	.33(b)	.33(b)
The home shall assist the affected individuals and household members to negotiate choices in accordance with the home's practices to resolve differences and make choices.				
An individual's rights may only be modified in accordance with §§ 2380.185, 2390.155, 6400.185, 6500.155 (relating to content of the individual plan) to the extent necessary to mitigate a significant health and safety risk to the individual or others.	.21(t)	.21(t)	.32(v)	.32(v)
The facility/home shall inform and explain individual rights and the process to report a rights violation to the individual, and persons designated by the individual, upon admission to the facility/home and annually thereafter.	.21(u)	.21(u)	.34(a)	.34(a)
Individual rights and the process to report a rights violation shall be explained to the individual, and persons designated by the individual, prior to moving into the home and annually thereafter.				
The facility/home shall keep a copy of the statement signed by the individual or the individual's court-appointed legal guardian, acknowledging receipt of the information on individual rights.	.21(v)	.21(v)	.34(b)	.34(b)
A copy of the statement signed by the individual, or the individual's court-appointed legal guardian, acknowledging receipt of the information on individual rights shall be kept.				
An individual has the right to receive scheduled and unscheduled visitors, and to communicate and meet privately with whom the individual chooses, at any time.			.32 (l)	.32(l)
An individual has the right to unrestricted access to send and receive mail and other forms of communications, unopened and unread by others, including the right to share contact information with whom the individual chooses.			.32(m)	.32(m)

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An individual has the right to unrestricted and private access to telecommunications.			.32(n)	.32(n)
An individual has the right to manage and access the individual's finances.			.32(o)	.32(o)
An individual has the right to choose persons with whom to share a bedroom.			.32(p)	.32(p)
An individual has the right to furnish and decorate the individual's bedroom and the common areas of the home in accordance with § 6400.33 (relating to negotiation of choices).			.32(q)	.32(q)
An individual has the right to furnish and decorate the individual's bedroom in accordance with § 6500.33 (relating to negotiation of choices).				
An individual has the right to lock the individual's bedroom door.  (1) Locking may be provided by a key, access card, keypad code or other entry mechanism accessible to the individual to permit the individual to lock and unlock the door. (2) Access to an individual's bedroom shall be provided only in a life-safety emergency or with the express permission of the individual for each incidence of access. (3) Assistive technology shall be provided as needed to allow the individual to lock and unlock the door without assistance. (4) The locking mechanism shall allow easy and immediate access by the individual and staff persons in the event of an emergency. (5) Direct service workers who provide services to the individual (primary caregiver in chapter 6500) shall have the key or entry device to lock and unlock the door.			.32(r)	.32(r)
An individual has the right to have a key, access card, keypad code or other entry mechanism to lock and unlock an entrance door of the home.  (1) Assistive technology shall be provided as needed to allow the individual to lock and unlock the door without assistance. (2) The locking mechanism shall allow easy and immediate access by the individual and staff persons in the event of an emergency. (3) Direct service workers who provide services to the individual shall have the key or entry device to lock and unlock the door. <i>* The requirements in 1 through 3 are not required per Chapter 6500.</i>			.32(s)	.32(s)
An individual has the right to access food at any time.			.32(t)	.32(t)
An individual has the right to make health care decisions.			.32(u)	.32(u)
There shall be a written policy that establishes procedures for the protection and adequate accounting of individual funds and property and for advising/counseling the individual concerning the use of funds and property.			.22(a)	.24(a)
The home's policy may not prohibit the individual's right to manage the individual's own finances.  The policy may not prohibit or interfere with the individual's right to manage the individual's own finances.			.22(b)	.24(b)

Regulatory Requirement	Regulatory Citations			
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Individual funds and property shall be used for the individual's benefit.			.22(c)	.24(c)
The home shall keep an up-to-date financial and property record for each individual that includes the following:  (1) Personal possessions and funds received by or deposited with the home/family/agency. (2) Disbursements made to or for the individual.			.22(d)	.24(d)
If the home/agency/family assumes the responsibility of maintaining an individual's financial resources, the following shall be maintained for each individual:  (1) A separate record of financial resources, including the dates and amounts of deposits and withdrawals. (2) For a withdrawal when the individual is given the money directly, the record shall indicate that funds were given directly to the individual. (3) Documentation, by actual receipt or expense record, of each single purchase exceeding \$15 made on behalf of the individual carried out by or in conjunction with a staff person/family members/agency staff.			.22(e)	.24(e)
There may be no commingling of the individual's personal funds with the home or staff person's funds.  There may not be commingling of the individual's personal funds with agency or household funds.			.22(f)	.24(f)
There may be no borrowing of the individual's personal funds by staff persons or by the home.  There may not be borrowing of the individual's personal funds by family members or agency staff.			.22(g)	.24(g)
The facility shall have written grievance procedures for individuals and their families and advocates, that assure investigation and resolution of complaints.  Upon admission, a client shall be given written information outlining working hours, benefits, leave policy, civil rights policies and procedures and grievance procedures. This information shall be explained to the client. A written record of the explanation shall be signed by the client and available in the client's record.  The home shall have written grievance procedures for individuals, individual's families, advocates and staff persons, that assure investigation and resolution of complaints.	.22	.112(b)	.23	
The child <sup>2</sup> , the child's parents and the child's legal guardian shall be provided the opportunity to participate in the exercise of rights, decision-making and individual plan activities, unless otherwise prohibited by court order.			.25(a)	.26(a)

<sup>2</sup> For purposes of sections 6400.25 and 6500.26, a child is an individual who is under 18 years of age.

The provisions of this chapter regarding rights, decision-making and individual plan activities shall be implemented in accordance with generally accepted, age-appropriate parental decision-making and practices for children, including bedtimes, privacy, school attendance, study hours, visitors and access to food and property, and do not require a modification of rights in the individual plan in accordance with § 6400.185 or § 6500.155 (relating to content of the individual plan).			.25(b)	.26(b)
The individual plan in § 6400.185 or § 6500.155 shall include desired outcomes relating to strengthening or securing a permanent caregiving relationship for the child.			.25(c)	.26(c)
An unrelated child and adult may not share a bedroom.			.25(d)	.26(d)
Records of orientation and training, including the training source, content, dates, length of training, copies of certificates received and persons attending, shall be kept.	.37(a)	.40(a)		
A home serving individuals with a physical disability, blindness, a visual impairment, deafness or a hearing impairment shall have accommodations to ensure the safety and reasonable accessibility for entrance to, movement within and exit from the home based upon each individual's needs.  A facility serving one or more individuals with a physical disability, blindness, a visual impairment, deafness or a hearing impairment shall have accommodations to ensure the safety and reasonable accessibility for entrance to, movement within and exit from the facility based upon each individual's needs.  For facilities serving physically handicapped clients, accommodations such as ramping and wide doorways shall be made to ensure the maximum physical accessibility feasible for entrance to, movement within, and exit from the facility, based upon each client's physical characteristics.	.51	.51	.61(a)	.61(a)
A home serving individuals with a physical disability, blindness, a visual impairment, deafness or a hearing impairment shall have adaptive equipment necessary for the individuals to move about and function at the home.			.61(b)	.61(b)
The home/life sharing home shall provide services, including assistance, training and support for the acquisition, maintenance or improvement of functional skills, personal needs, communication and personal adjustment.			.188(a)	.158(a)
The home/life sharing home shall provide opportunities and support to the individual for participation in community life, including volunteer or civic-minded opportunities and membership in National or local organizations.  The facility shall provide opportunities and support to the client for participation in community life, including competitive community-integrated employment.  The facility shall provide opportunities and support to the individual for participation in community life, including work opportunities.	.188(b)	.158(b)	.188(b)	.158(b)

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The facility shall provide services including work experience and other developmentally oriented vocational training designed to develop the skills necessary for promotion into a higher level of vocational programming or competitive community-integrated employment.		.158(a)		
The facility shall provide services including assistance, training and support for the acquisition, maintenance or improvement of functional skills, personal needs, communication and personal adjustment.	.188(a)			
The home/life sharing home shall provide services to the individual as specified in the individual plan.	.188(c)	.158(c)	.188(c)	.158(c)
The facility shall provide services to the individual as specified in the individual's individual plan.				
The home/life sharing home/facility shall provide services that are age and functionally appropriate to the individual.	.188(d)	.158(d)	.188(d)	.158(d)
The residential home/home shall provide recreational and social activities, including volunteer or civic-minded opportunities and membership in National or local organizations at the following locations:  (1) At the residential home/home. (2) Away from the residential home/home.			.190(a)	.160(a)
Time away from the residential home/home may not be limited to time in school, work or vocational, developmental and volunteer facilities.			.190(b)	.160(b)
Documentation of recreational and social activities shall be kept in the individual's record.			.190(c)	.160(c)
A restrictive procedure may not be used as retribution, for the convenience of staff persons, as a substitute for a program or in a way that interferes with the individual's developmental program.	.153(a)	.173(a)		
For each incident requiring a restrictive procedure:  (1) Every attempt shall be made to anticipate and de-escalate the behavior using methods of intervention less intrusive than a restrictive procedure. (2) A restrictive procedure may not be used unless less restrictive techniques and resources appropriate to the behavior have been tried but have failed.	.153(b)	.173(b)		
For each individual for whom a restrictive procedure may be used, the individual plan shall include a component addressing behavior support that is reviewed and approved by the human rights team in §2380.154/ § 2390.174 § 6400.194/ § 6500.164 (relating to human rights team), prior to use of a restrictive procedure.	.155(a)	.175(a)	.195(a)	.165(a)
The behavior support component of the individual plan shall be reviewed and revised as necessary by the human rights team, according to the time frame established by the team, not to exceed 6 months between reviews.	.155(b)	.175(b)		

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<p>The behavior support component of the individual plan shall include:</p> <ol style="list-style-type: none"> <li>(1) The specific behavior to be addressed.</li> <li>(2) An assessment of the behavior, including the suspected reason for the behavior.</li> <li>(3) The outcome desired.</li> <li>(4) A target date to achieve the outcome.</li> <li>(5) Methods for facilitating positive behaviors such as changes in the individual's physical and social environment, changes in the individual's routine, improving communications, recognizing and treating physical and behavior health conditions, voluntary physical exercise, redirection, praise, modeling, conflict resolution, de-escalation and teaching skills.</li> <li>(6) Types of restrictive procedures that may be used and the circumstances under which the procedures may be used.</li> <li>(7) The amount of time the restrictive procedure may be applied.</li> <li>(8) The name of the staff person/person responsible for monitoring and documenting progress with the behavior support component of the individual plan.</li> </ol>	.155(c)	.175(c)	.195(c)	.165(b)
<p>The following procedures are prohibited:</p> <ol style="list-style-type: none"> <li>(1) Seclusion, defined as involuntary confinement of an individual in a room or area from which the individual is physically prevented or verbally directed from leaving. Seclusion includes physically holding a door shut or using a foot pressure lock.</li> <li>(2) Aversive conditioning, defined as the application of startling, painful or noxious stimuli.</li> <li>(3) Pressure-point techniques, defined as the application of pain for the purpose of achieving compliance. A pressure-point technique does not include a clinically accepted bite release technique that is applied only as long as necessary to release the bite.</li> <li>(4) A chemical restraint, defined as use of a drug for the specific and exclusive purpose of controlling acute or episodic aggressive behavior. A chemical restraint does not include a drug ordered by a health care practitioner or dentist for the following use or event: <ol style="list-style-type: none"> <li>(i) Treatment of the symptoms of a specific mental, emotional or behavioral condition.</li> <li>(ii) Pretreatment prior to a medical or dental examination or treatment.</li> <li>(iii) An ongoing program of medication.</li> <li>(iv) A specific, time-limited stressful event or situation to assist the individual to control the individual's own behavior.</li> </ol> </li> <li>(5) A mechanical restraint, defined as a device that restricts the movement or function of an individual or portion of an individual's body. A mechanical restraint includes a geriatric chair, a bedrail that restricts the movement or function of the individual, handcuffs, anklets, wristlets, camisole, helmet with fasteners, muffs and mitts with fasteners, restraint vest, waist strap, head strap, restraint board, restraining sheet, chest restraint and other similar devices. A mechanical restraint does not include the use of a seat belt during movement or transportation. A mechanical</li> </ol>	.166	.177	.207	.177

<p>restraint does not include a device prescribed by a health care practitioner for the following use or event:</p> <ul style="list-style-type: none"> <li>(i) Post-surgical or wound care.</li> <li>(ii) Balance or support to achieve functional body position, if the individual can easily remove the device or if the device is removed by a staff person immediately upon the request or indication by the individual, and if the individual plan includes periodic relief of the device to allow freedom of movement.</li> <li>(iii) Protection from injury during a seizure or other medical condition, if the individual can easily remove the device or if the device is removed by a staff person immediately upon the request or indication by the individual, and if the individual plan includes periodic relief of the device to allow freedom of movement.</li> </ul>				
<p>Access to or the use of an individual’s personal funds or property may not be used as a reward or punishment.</p>	.169(a)	.180(a)	.210(a)	.180(a)
<p>An individual’s personal funds or property may not be used as payment for damages unless the individual consents to make restitution for the damages. The following consent provisions apply unless there is a court-ordered restitution:</p> <ul style="list-style-type: none"> <li>(1) A separate written consent is required for each incidence of restitution.</li> <li>(2) Consent shall be obtained in the presence of the individual or a person designated by the individual.</li> <li>(3) The home/agency/facility may not coerce the individual to provide consent.</li> </ul>	.169(b)	.180(b)	.210(b)	.180(b)
<p>Individual records shall be kept locked when they are unattended.</p> <p>Information in the client records shall be kept confidential. Client records shall be kept locked when unattended.</p>	.176(a)	.123		
<p>The individual, and the individual’s parent, guardian or advocate, shall have access to the records and to information in the records. If the interdisciplinary team documents, in writing, that disclosure of specific information constitutes a substantial detriment to the individual or that disclosure of specific information will reveal the identity of another individual or breach the confidentiality of persons who have provided information upon an agreement to maintain their confidentiality, that specific information identified may be withheld.</p>	.176(b)			